

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : James Paul Haughwout
Serial No. : 09/819,899
Filed : March 29, 2001
Title : SMART TRANSFER

Art Unit : 3625
Examiner : Maria Thein
Conf. No. : 5374

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

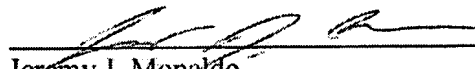
RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF (37 C.F.R. 41.37)

In response to the notification of non-compliant appeal brief dated August 23, 2007, appellant submits the attached supplemental appeal brief, which includes a statement of the status of claims 151-153 indicating that those claims are rejected and appealed and also includes a concise explanation of the subject matter defined by independent claim 136 referring to the specification and drawings. The brief fee has previously been paid.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 9/24/2007



Jeremy J. Monaldo
Reg. No. 58,680

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	James Paul Haughwout	Art Unit :	3625
Serial No. :	09/819,899	Examiner :	Maria Thein
Filed :	March 29, 2001	Conf. No. :	5374
Title :	SMART TRANSFER		

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

SUPPLEMENTAL BRIEF ON APPEAL

(1) Real Party in Interest

The real party in interest is AOL LLC.

(2) Related Appeals and Interferences

Appellant filed a pre-appeal brief request for review on June 19, 2007 pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 – New Pre-Appeal Brief Conference Pilot Program. However, the pre-appeal brief was filed after the filing of the notice of appeal, and, as such, it has not been considered.

(3) Status of Claims

Rejected Claims

90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 133-153.

Canceled Claims

1-89, 91-93, 95, 98-106, 108-110, 113-119, 121-123, and 126-132.

Claims Appealed

90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 133-153.

(4) Status of Amendments

The amendment filed on September 18, 2006, in response to the non-final Office Action has been entered. A Final Office Action was mailed on December 15, 2006. No additional amendments have been filed after subsequent to the mailing of the Final Office Action.

(5) Summary of Claimed Subject Matter

90. A process for assisting presentation of sales pitches appropriate for a particular telephone caller of a customer service call center, the process comprising:

receiving and handling at a customer service call center an incoming service call from a caller seeking assistance (Application at page 5, lines 10-13; page 8, lines 9-11; and FIGS. 1-2); and

leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including (Application at page 8, lines 9-23 and FIG. 2):

identifying a caller identity or a first caller attribute related to the caller (Application at page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4.),

storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches (Application at page 9, lines 13-18 and FIG. 3),

searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute (Application at page 10, lines 9-22 and FIG. 4),

omitting to search a second electronic database of potential sales pitches for a sales pitch based upon at least the additional attribute of the caller (Application at page 7, lines 20-26; page 11, lines 1-19; and FIGS. 1 and 5), and

routing the service call to a human operator (Application at page 8, lines 17-20; page 18, lines 7-10; and FIGS. 1-2).

107. A system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the system comprising:

an identification component configured to determine a caller identity related to a caller seeking assistance from a customer service call center (Application at page 5, line 28 to

page 6, line 6; page 7, lines 1-13; page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4.);

a first electronic database configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches (Application at page 7, line 20 to page 8, line 8; page 9, lines 13-18; and FIG. 3);

a search component configured to identify in the first electronic database the attribute related to the caller based on the caller identity and configured to omit searching a second electronic database of potential sales pitches for a sales pitch based on the attribute (Application at page 7, lines 1-13; page 8, lines 17-23; page 10, lines 9-22; page 11, lines 1-19; and FIGS. 1, 4, and 5); and

a call router configured to route the service call to a human operator to assist the caller (Application at page 7, lines 1-13; page 8, lines 17-20; page 18, lines 7-10; and FIGS. 1-2).

120. A computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the computer program comprising:

an identification code segment that causes the computer to determine a caller identity related to a caller seeking assistance from a customer service call center (Application at page 5, line 28 to page 6, line 6; page 7, lines 1-13; page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4);

a first database code segment configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches (Application at page 7, line 20 to page 8, line 8; page 9, lines 13-18; and FIG. 3);

a search code segment that causes the computer to identify the stored attribute related to the caller based on the caller identity and to omit searching a second electronic database of potential sales pitches for a sales pitch based on the attribute (Application at page 7, lines 1-13; page 8, lines 17-23; page 10, lines 9-22; page 11, lines 1-19; and FIGS. 1, 4, and 5); and

a call routing code segment that causes the computer to route the service call to a human operator to assist the caller (Application at page 7, lines 1-13; page 8, lines 17-20; page 18, lines 7-10; and FIGS. 1-2).

133. A process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center, the process comprising:

receiving and handling at a customer service call center an incoming service call from a caller seeking assistance (Application at page 5, lines 10-13; page 8, lines 9-11; and FIGS. 1-2); and

leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including (Application at page 8, lines 9-23 and FIG. 2):

identifying a caller identity or a first caller attribute related to the caller (Application at page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4.),

storing in a first electronic database, prior to the receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller (Application at page 9, line 13 to page 10, line 8 and FIG. 3),

searching the first electronic database to identify the information indicative of past misbehavior based on at least one of the caller identity or the first caller attribute (Application at page 10, lines 9-22 and FIG. 4),

omitting to search the second electronic database for a potential sales pitch based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account (Application at page 7, lines 20-26; page 9, line 13 to page 10, line 8; page 11, lines 1-19; and FIGS. 1 and 5),

routing the service call to a human operator based on the identified information indicative of past misbehavior (Application at page 8, lines 17-20; page 18, lines 7-8; and FIGS. 1-2), and

assisting the human operator to take the service call based on the identified

information indicative of past misbehavior (Application at page 8, lines 17-20; page 18, lines 7-8; page 23, lines 17-19; and FIGS. 1-2).

134. A system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the system comprising:

an identification component configured to determine a caller identity related to a caller seeking assistance from a customer service call center (Application at page 5, line 28 to page 6, line 6; page 7, lines 1-13; page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4.);

a first electronic database configured to store, prior to receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller (Application at page 7, line 20 to page 8, line 8; page 9, line 13 to page 10, line 8; and FIGS. 1 and 3);

a search component configured to identify in the first electronic database the information indicative of past misbehavior based on the caller identity, wherein the information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account (Application at page 7, lines 1-13; page 9, line 13 to page 10, line 8; page 10, lines 9-22; page 11, lines 1-19; and FIGS. 1, 4, and 5);

a call router configured to bypass a sales pitch selection process and to route the service call to a human operator based on the identified information indicative of past misbehavior (Application at page 7, lines 1-13; page 8, lines 17-20; page 11, lines 1-5; page 18, lines 7-8; and FIGS. 1-2 and 5); and

a presentation component configured to assist the human operator to take the service call based on the identified information indicative of past misbehavior (Application at page 7, lines 1-13; page 8, lines 17-20; page 18, lines 7-10; page 23, lines 17-19; and FIGS. 1-2).

135. A computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the computer program comprising:

- an identification code segment that causes the computer to determine a caller identity related to a caller seeking assistance from a customer service call center (Application at page 5, line 28 to page 6, line 6; page 7, lines 1-13; page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4.);

- a first database code segment configured to store, prior to receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller (Application at page 7, line 20 to page 8, line 8; page 9, line 13 to page 10, line 8; and FIGS. 1 and 3);

- a search code segment that causes the computer to identify the information indicative of past misbehavior based on the caller identity (Application at page 7, lines 1-13; page 9, line 13 to page 10, line 22; page 11, lines 1-19; and FIGS. 1, 4, and 5);

- a second database code segment configured to cause the computer to identify a first sales pitch for the caller (Application at page 7, lines 1-26; and FIG. 1);

- a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account (Application at page 7, lines 1-26; page 8, lines 17-23; page 9, line 13 to page 10, line 8; page 11, lines 1-19; and FIGS. 1-3 and 5); and

- a presentation code segment that causes the computer to assist the human operator to present the service call based on the identified information indicative of past misbehavior (Application at page 7, lines 1-13; page 8, lines 17-20; page 18, lines 7-8; page 23, lines 17-19; and FIGS. 1-2).

136. A process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center, the process comprising:

receiving and handling, at a customer service call center, an incoming service call from a caller seeking assistance (Application at page 5, lines 10-13; page 8, lines 9-11; and FIGS. 1-2); and

leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including (Application at page 8, lines 9-23 and FIG. 2):

identifying a caller identity or a first caller attribute related to the caller (Application at page 7, line 30 to page 8, line 16; page 9, lines 6-12; page 10, lines 9-22; and FIGS. 1-4.),

storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product (Application at page 9, lines 13-24 and FIG. 3),

searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity and the first caller attribute (Application at page 10, lines 9-22 and FIG. 4),

searching, based upon at least the additional attribute of the caller, a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product (Application at page 7, lines 20-26; page 11, line 20 to page 12, line 16; and FIGS. 1, 5, and 6),

routing the service call to a human operator for presentation of the first sales pitch to the caller (Application at page 8, lines 24-27; page 11, lines 20-22; page 12, lines 15-16; page 16, lines 17-21; page 18, lines 7-8; page 23, lines 17-20; and FIGS. 1-2), and

assisting the human operator in presenting the first sales pitch to the caller (Application at page 8, lines 24-27; page 11, lines 20-22; page 12, lines 15-16; page 16, lines 17-21; page 18, lines 7-8; page 23, lines 17-20; and FIGS. 1-2).

(6) Grounds of Rejection to be Reviewed on Appeal

A. Whether independent claims 90, 107, 120, and 136, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 137-153 are unpatentable under 35 U.S.C. § 103 over U.S. Patent Number 6,553,113 ("Dhir") in view of U.S. Patent Number 6,665,644 ("Kanevsky").

B. Whether independent claims 133-135 were rejected as being unpatentable over Dhir in view of Kanevsky, and in further view of U.S. Patent Number 5,511,112 ("Szlam").

(7) Argument

Rejection under 35 U.S.C. 103

Independent claims 90, 107, 120, and 136, along with their dependent claims 94, 96, 97, 111, 112, 124, 125, and 137-153 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir in view of Kanevsky. Independent claims 133-135 were rejected as being unpatentable over Dhir in view of Kanevsky, and in further view of Szlam.

Appellant respectfully submits that the final Office Action has failed to establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP § 2143. Appellant respectfully asserts Dhir, Kanevsky, and Szlam, either alone or in combination, fail to describe or suggest all the features of independent claims 90, 107, 120, and 133-136. The following remarks address the rejection of claims 90, 107, and 120 first, then address the rejection of claim 136, and lastly address the rejection of claims 133-135.

A. Rejection of independent claims 90, 107, and 120, and their dependent claims.

Independent claim 90 recites a process for assisting presentation of sales pitches appropriate for a particular telephone caller of a customer service call center. The process includes receiving and handling at a customer service call center an incoming service call from a caller seeking assistance and leveraging the incoming service call for assistance as a conduit for

soliciting the caller to purchase merchandise or services. The leveraging includes identifying a caller identity or a first caller attribute related to the caller, storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. The leveraging also includes searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute, omitting to search a second electronic database of potential sales pitches for a sales pitch based upon at least the additional attribute of the caller, and routing the service call to a human operator.

Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 90 and its dependent claims because Dhir and Kanevsky, either alone or in combination, fail to describe or suggest at least “storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches” (emphasis added), as recited in claim 90.

The Final Office Action acknowledges that “Dhir does not disclose a preference of the caller not to receive any sales pitch.” Final Office Action, page 3, lines 12-14. Instead, the Final Office Action relies on Kanevsky to show this feature. Appellant respectfully asserts that Kanevsky is equally deficient.

Kanevsky relates to a method for collecting data associated with the voice of a voice system user. Abstract. The system determines from the voice of the user whether the user is in a happy emotional state, or whether the user is in a fearful and angry emotional state, and the system provides the user with a different response depending on whether the user is in a happy or an angry emotional state. Col. 11, lines 49-53. Specifically, if the user is in a happy emotional state, the system offers to the user at least one of a product and a service. Col. 11, lines 53-55. Alternatively, if the user is in an angry emotional state, the system transfers the user from an IVR system to a human operator. As such, Kanevsky teaches a system that makes an inference, from the user's current emotional state, as to whether the user should be provided with a particular offer or instead transferred to a human operator. Accordingly, Kanevsky does not describe or suggest storing a caller's actual preference not to receive any sales pitches.

In response to the above-presented arguments, the Final Office Action asserts that Kanevsky describes an automated system that transfers to the supervisory person users, who are in a disgusted, contemptuous, fearful, and angry emotional state or who have problem with the automated system. Final Office Action, page 13, lines 12-15. And, the Final Office Action concludes "detection of a user who has problem with the automated system and should be transferred to an operator and detection of [a user] who [is] angry at the service and should be transferred to a supervisory person are considered a preference of the caller not to receive any sales pitch." Final Office Action, page 13, lines 14-18. In other words, the Final Office Action seems to suggest that the user's projection of mood or difficulty in dealing with the system operates as an indication of a preference for or against receiving an advertisement. Appellant disagrees.

The user's projection of mood or difficulty in dealing with the system is different from detecting users who have a preference not to receive any sales pitches *because* a preference of the caller not to receive any sales pitches necessarily requires that the caller choose or otherwise select not to receive any sales pitches. A mere inference that the caller may or may not wish to receive a sales pitch, as suggested by Kanevsky, is insufficient to meet this limitation.¹

This distinction is important because Kanevsky's system is simply unable to satisfy a caller's actual sales pitch preferences. For example, an angry caller may still be interested in a sales pitch, and thus may have a preference to receive sales pitches, yet Kanevsky's system would not permit that caller to receive a sales pitch because the caller is detected as being angry. Similarly, a happy caller may not be interested in receiving any sales pitches, and thus may have a preference not to receive any sales pitches, yet Kanevsky's system would burden that caller with an undesired sales pitch simply because the system detected the caller as being happy. Similarly, a caller who is having problem with the automated system may very well wish to receive sales pitch preferences while figuring the system out. In sum, Kanevsky's system detects and stores moods of a caller and presents or does not present sales pitches based on the detected

¹ Dictionary.com defines preference as the selection of someone or something over another. See www.dictionary.com. Merriam-Webster defines preference as the power or opportunity of choosing. See www.m-w.com.

moods. Kanevsky's system, however, does not store caller sales pitch preferences, much less a caller sales pitch preference not to receive any sales pitches.

Accordingly, Kanevsky fails to describe or suggest "storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches" (emphasis added), as recited in claim 90. For at least the forgoing reasons, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 90, along with its dependent claims.

Independent claim 107 recites a system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The system includes, among other features, "a first electronic database configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches." As such, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 107, along with its dependent claims, for at least the reasons presented above with respect to claim 90.

Independent claim 120 recites a computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The computer program includes, among other features, "a first database code segment configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches." As such, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 120, along with its dependent claims, for at least the reasons presented above with respect to claim 90.

B. Rejection of independent claim 136, and its dependent claims.

Independent claim 136 recites a process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center. The process includes receiving and handling, at a customer service call center, an incoming service call from

a caller seeking assistance and leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services. The leveraging includes identifying a caller identity or a first caller attribute related to the caller, storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller. The sales pitch preference includes a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product. The leveraging also includes searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity and the first caller attribute, searching, based upon at least the additional attribute of the caller, a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product, routing the service call to a human operator for presentation of the first sales pitch to the caller, and assisting the human operator in presenting the first sales pitch to the caller.

Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 136 because Dhir and Kanevsky, either alone or in combination, fail to describe or suggest at least "storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product" (emphasis added), as recited in claim 136.

The Final Office Action seems to acknowledge that Dhir fails to describe or suggest the above-recited feature and relies on Kanevsky for such teachings. In particular, the Final Office Action relies on, among other sections, column 7, lines 46-54, of Kanevsky to show the above-recited feature. Final Office Action, page 7, line 18. In column 7, lines 46-54, however, Kanevsky teaches "[b]usiness objectives can include, for example, detection of users who are vulnerable to a proposal to buy a given product or service, detection of users who have problems with the automated system and should be transferred to an operator and detection of users who are angry at the service and should be transferred to a supervisory person" (emphasis added). Here, Kanevsky simply teaches detection of a user who is vulnerable to a proposal to buy a given product or service without any further teaching or suggestion as to how this detection relates to a user sales pitch preference. Even if this detection of user vulnerability could somehow be

properly characterized as a sales pitch preference of the user, which Appellant does not concede, Kanevsky is silent as to whether this detection would be a basis to offer the user a particular sales pitch or not to offer the user a particular sales pitch.

That is, it is not clear based on Kanevsky's teaching whether such detection would be used by Kanevsky's system to target the user with a sales pitch for the product or service to which the user is vulnerable and perhaps thereby increase the likelihood of a sale, or would instead be used not to target the user with such a sales pitch. In either case, Kanevsky, nevertheless, still fails to describe or suggest storing a sales pitch preference of a caller not to receive any sales pitches related to a provider of that product or service.

In particular, even if one were to assume *arguendo* that the detection of a user's vulnerability to a proposal to buy a given product or service could be properly characterized as a user preference not to receive a sales pitch related to that particular product or service, which Appellant does not concede, Kanevsky would, nevertheless, still fail to meet the above-stated feature because a preference to not receive a sales pitch related to a product or service is not the same as a preference to not receive any sales pitches related to a provider of that product or service. This distinction is perhaps best illustrated with an example. Kanevsky's system may detect that a user is vulnerable to alcohol and, therefore, Kanevsky's system, under the above assumptions, may decide not to present the user with any sales pitches offering alcoholic beverages from a provider. Kanevsky's system, however, would still present the user with sales pitches from that same provider if the provider offers other kinds of beverages or other kinds of products or services in addition to alcoholic beverages. Put simply, as long as the provider offers other kinds of products or services in addition to alcoholic beverages, the provider can still target the user with sales pitches related to those other kinds of products or services. In contrast, in claim 136, after the user expresses a desire not to receive any sales pitch from a provider of a service or product, the user will not receive any sales pitches whatsoever from any provider that provides that product or service, irrespective of the other kinds of product or services offered by the provider.

Accordingly, Dhir and Kanevsky, either alone or in the proposed combination, fail to describe or otherwise suggest "storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of

the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product” (emphasis added), as recited in claim 136.

For at least the forgoing reasons, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 136, along with its dependent claims.

C. Rejection of independent claims 133-135, and their dependent claims.

Independent claim 133 recites a process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center. The process includes receiving and handling at a customer service call center an incoming service call from a caller seeking assistance and leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services. The leveraging includes identifying a caller identity or a first caller attribute related to the caller, storing in a first electronic database, prior to the receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller, searching the first electronic database to identify the information indicative of past misbehavior based on at least one of the caller identity or the first caller attribute. The leveraging also includes omitting to search the second electronic database for a potential sales pitch based on the identified information indicative of past misbehavior. The identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account. The leveraging also includes routing the service call to a human operator based on the identified information indicative of past misbehavior and assisting the human operator to take the service call based on the identified information indicative of past misbehavior.

Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 133 because Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest at least “a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the

caller has violated a terms of service agreement associated with the caller's account" (emphasis added), as recited in claim 133.

The Final Office Action seems to acknowledge the shortcomings of Dhir and Kanevsky in this regard and instead relies on Szlam for teaching this feature. In particular, the Final Office Action asserts that Szlam teaches past misbehavior that includes the caller violating a terms of service agreement associated with the caller's account. Final Office Action, page 11, lines 11-13. Appellant submits that Szlam is equally deficient.

Szlam relates to an automated voice system for improving agent efficiency and improving service to parties placed on hold. Title. In one example Szlam describes that when an agent calls a party and is placed on hold by the party, the automated voice system allows the agent to press a key to indicate that the agent has been placed on hold. Col. 2, lines 37-40. Pressing the key causes the agent to be disconnected from the call with the party and connected to another call. Upon being disconnected from the call, a message is played on the telephone line to the party that placed the agent on hold indicating that the agent will return to assist the party if the party presses a presence key. Col. 2, lines 40-44. Apparently, Szlam's automated system reduces the on-hold time of the agent by allowing the agent who has been placed on-hold to be connected to other calls, thereby increasing the agent's efficiency.

Nowhere, however, does Szlam describe or suggest making a determination to route the call to a human operator or agent based on information indicative of past misbehavior. Rather, Szlam teaches determining to route the call to an agent or human operator based on whether or not the human operator has been placed on hold by a party.

Accordingly, Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest "a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account" (emphasis added), as recited in claim 133.

For at least the forgoing reasons, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 133, along with its dependent claims.

Independent claim 134 recites a system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The system includes, among other features, "a call router configured to bypass a sales pitch selection process and to route the service call to a human operator based on the identified information indicative of past misbehavior [wherein the information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account]" (emphasis added). As such, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 134, along with its dependent claims, for at least the reasons presented above with respect to claim 133.

Independent claim 135 recites a computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service. The computer program includes, among other features, "a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account" (emphasis added). As such, Appellant respectfully requests reconsideration and withdrawal of the rejection of claim 135, along with its dependent claims, for at least the reasons presented above with respect to claim 133.

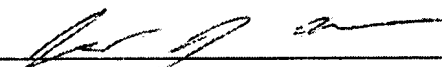
Applicant : James Paul Haughwout
Serial No. : 09/819,899
Filed : March 29, 2001
Page : 17 of 28

Attorney's Docket No.: 06975-144001./ Member
Services 04

Please apply any charges or credits to deposit account 06 1050.

Respectfully submitted,

Date: 9/24/2007



Jeremy J. Monaldo
Reg. No. 58,680

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331

40447569.doc

Appendix of Claims

1-89. (Cancelled)

90. (Previously presented) A process for assisting presentation of sales pitches appropriate for a particular telephone caller of a customer service call center, the process comprising:

receiving and handling at a customer service call center an incoming service call from a caller seeking assistance; and

leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including:

identifying a caller identity or a first caller attribute related to the caller,

storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches,

searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute,

omitting to search a second electronic database of potential sales pitches for a sales pitch based upon at least the additional attribute of the caller, and

routing the service call to a human operator.

91-93. (Cancelled)

94. (Previously presented) The process of claims 90 further comprising populating the first electronic database prior to the call with information indicative of the caller.

95. (Cancelled)

96. (Previously presented) The process of claim 94 further comprising populating the first electronic database with information indicative of responses made by the caller in response to past sales pitch presentations.

97. (Previously presented) The process of claim 94 further comprising populating at least one of the first or the second electronic database with information indicative of past misbehavior of the caller.

98-106. (Cancelled)

107. (Previously presented) A system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the system comprising:

- an identification component configured to determine a caller identity related to a caller seeking assistance from a customer service call center;

- a first electronic database configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches;

- a search component configured to identify in the first electronic database the attribute related to the caller based on the caller identity and configured to omit searching a second electronic database of potential sales pitches for a sales pitch based on the attribute; and

- a call router configured to route the service call to a human operator to assist the caller.

108-110. (Cancelled)

111. (Previously presented) The system of claim 107 wherein the first electronic database is configured further to store information indicative of past misbehavior of the caller.

112. (Previously presented) The system of claim 107 wherein the first electronic database is configured further to store information indicative of a response by the caller to a past sales pitch.

113-119. (Canceled)

120. (Previously presented) A computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the computer program comprising:

an identification code segment that causes the computer to determine a caller identity related to a caller seeking assistance from a customer service call center;

a first database code segment configured to store as an attribute related to the caller and prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller comprising a preference of the caller not to receive any sales pitches;

a search code segment that causes the computer to identify the stored attribute related to the caller based on the caller identity and to omit searching a second electronic database of potential sales pitches for a sales pitch based on the attribute; and

a call routing code segment that causes the computer to route the service call to a human operator to assist the caller.

121-123. (Cancelled)

124. (Previously presented) The computer program of claim 120 wherein the first database code segment further causes the computer to store information indicative of past misbehavior of the caller.

125. (Previously presented) The computer program of claim 120 wherein the first database code segment further causes the computer to store information indicative of a response by the caller to a past sales pitch.

126-132. (Canceled)

133. (Previously presented) A process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center, the process comprising:

- receiving and handling at a customer service call center an incoming service call from a caller seeking assistance; and

- leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including:

 - identifying a caller identity or a first caller attribute related to the caller,

 - storing in a first electronic database, prior to the receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller,

 - searching the first electronic database to identify the information indicative of past misbehavior based on at least one of the caller identity or the first caller attribute,

 - omitting to search the second electronic database for a potential sales pitch based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account,

 - routing the service call to a human operator based on the identified information indicative of past misbehavior, and

 - assisting the human operator to take the service call based on the identified information indicative of past misbehavior.

134. (Previously presented) A system for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the system comprising:

- an identification component configured to determine a caller identity related to a caller seeking assistance from a customer service call center;

- a first electronic database configured to store, prior to receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller;

a search component configured to identify in the first electronic database the information indicative of past misbehavior based on the caller identity, wherein the information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account;

a call router configured to bypass a sales pitch selection process and to route the service call to a human operator based on the identified information indicative of past misbehavior; and

a presentation component configured to assist the human operator to take the service call based on the identified information indicative of past misbehavior.

135. (Previously presented) A computer program stored on a computer readable medium for leveraging an incoming service call for assistance as a conduit to assist a human operator to solicit the caller to purchase a merchandise or service, the computer program comprising:

an identification code segment that causes the computer to determine a caller identity related to a caller seeking assistance from a customer service call center;

a first database code segment configured to store, prior to receipt of the incoming service call from the caller, information indicative of past misbehavior of the caller;

a search code segment that causes the computer to identify the information indicative of past misbehavior based on the caller identity;

a second database code segment configured to cause the computer to identify a first sales pitch for the caller;

a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account; and

a presentation code segment that causes the computer to assist the human operator to present the service call based on the identified information indicative of past misbehavior.

136. (Previously presented) A process for assisting presentation of a first sales pitch appropriate for a particular telephone caller of a customer service call center, the process comprising:

receiving and handling, at a customer service call center, an incoming service call from a caller seeking assistance; and

leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including:

identifying a caller identity or a first caller attribute related to the caller,

storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product,

searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity and the first caller attribute,

searching, based upon at least the additional attribute of the caller, a second electronic database of potential sales pitches to identify a first sales pitch that is not related to the first service or product and is not related to the provider of the first service or product,

routing the service call to a human operator for presentation of the first sales pitch to the caller, and

assisting the human operator in presenting the first sales pitch to the caller.

137. (Previously presented) The process of claim 136 wherein the sales pitch preference of the caller further comprises a preference to receive a certain type of sales pitch.

138. (Previously presented) The process of claims 136 further comprising populating the first electronic database prior to the call with information indicative of the caller.

139. (Previously presented) The process of claim 138 further comprising populating the first electronic database with information indicative of a response by the caller to the first sales pitch.

140. (Previously presented) The process of claim 138 further comprising populating the first electronic database with information indicative of responses made by the caller in response to past sales pitch presentations.

141. (Previously presented) The process of claim 138 further comprising populating at least one of the first or the second electronic database with information indicative of past misbehavior of the caller.

142. (Previously presented) The process of claim 136 further comprising searching the second electronic database for a second sales pitch for the caller immediately after the caller provides the response to the first sales pitch, wherein the first electronic database is populated with information indicative of a response by the caller to the first sales pitch prior to searching the database for the second sales pitch.

143. (Previously presented) The process of claim 136 wherein assisting the human operator in presenting the first sales pitch comprises displaying at least a portion of the selected first sales pitch on a display of the human operator.

144. (Previously presented) The process of claim 136 wherein the first sales pitch is identified within the second database only when at least the additional attribute of the caller indicates that the caller satisfies a predetermined criterion.

145. (Previously presented) The process of claim 136 wherein the first caller attribute indicates a geographic residence of the caller, and identifying the first sales pitch includes making unavailable for selection one or more sales pitches of the second electronic database based upon the geographic residence of the caller.

146. (Previously presented) The process of claim 136 wherein the additional attribute of the caller includes a credit status for the caller, and identifying the first sales pitch includes selecting the first sales pitch for the caller only when the credit status of the caller is satisfactory.

147. (Previously presented) The process of claim 136 further comprising transferring the caller to a commercial partner that provides a product or service that corresponds to the selected first sales pitch if the caller has expressed interest in the first sales pitch.

148. (Previously presented) The process of claim 136 further comprising communicating information related to the caller to the commercial partner substantially in real time.

149. (Previously presented) The process of claim 148 wherein the information comprises information related to the first sales pitch presented to the caller.

150. (Previously presented) The process of claim 136, further comprising:
transferring the caller to a commercial partner that provides a product or service that corresponds to the selected first sales pitch, wherein the commercial partner provides a second sales pitch to the caller;
receiving feedback information from the commercial partner regarding a response by the caller to the second sales pitch; and
populating the first electronic database with information indicative of the response by the caller to the second sales pitch.

151. (Previously presented) The method of claim 90 wherein storing in the first electronic database includes storing in the first electronic database, including multiple sales pitch preferences associated with multiple callers, each of the multiple sales pitch preferences corresponding to a preference not to receive any sales pitch.

152. (Previously presented) The system of claim 107 wherein the first electronic database is configured to store multiple sales pitch preferences associated with multiple callers, each of the multiple sales pitch preferences corresponding to a preference not to receive any sales pitch.

153. (Previously presented) The computer program of claim 120 wherein the first database code segment is configured to store multiple sales pitch preferences associated with multiple callers, each of the multiple sales pitch preferences corresponding to a preference not to receive any sales pitch.

Applicant : James Paul Haughwout
Serial No. : 09/819,899
Filed : March 29, 2001
Page : 27 of 28

Attorney's Docket No.: 06975-144001 / Member
Services 04

Evidence Appendix

No Copies required.

Applicant : James Paul Haughwout
Serial No. : 09/819,899
Filed : March 29, 2001
Page : 28 of 28

Attorney's Docket No.: 06975-144001 / Member
Services 04

Related Proceedings Appendix

No Copies required.